

REMARKS

Reconsideration of the above-identified application in view of: the amendment above, the accompanying terminal disclaimers and declaration under 37 C.F.R. 1.132, and the remarks below; is respectfully requested.

The Applicant thanks the Examiner for the brief discussion of proper format for declarations under 37 C.F.R. 1.132 which took place on Thursday, November 19, 2009.

Claim Objections

Claim 11 is objected to because of the following informalities: the word "tile" should be changed to "the". Appropriate correction is required.

Claim 11 has been amended as suggested by the Examiner. The Applicant respectfully asserts that Claim 11 is now in condition for allowance.

Claims 5-11 stand as objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 5 depends from Claim 1. Claim 1 stands as being rejected under 35 U.S.C. 102(e), but the Applicant is filing a declaration under 37 C.F.R. § 1.132 to overcome this rejection. Since Claim 5 and the other Claims subject to this objection are no longer depend from a rejected claim, the subject claims no longer need to be amended.

Claim Rejections - 35 USC § 102

Claims 1, 2, 4, 12-19, 26 and 27 stand as rejected under 35 U.S.C. 102(e) as being anticipated by Wantling (7294189).

In the office action, the Examiner noted that the applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference (Oct. 11, 2002), it constitutes prior art under 35 U.S.C. 102(e). The Examiner that this rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

After discussing this matter with the Examiner, the Applicant has decided to traverse this rejection using a declaration under 37 C.F.R. §1.132. Attached is a declaration by Steven J. Wantling asserting that he is the inventor of the '189 patent and thus is not "another" as specified under 35 U.S.C. §102(e). Since any invention disclosed but not claimed in the '189 reference was derived from the inventor of the present application, Mr. Wantling is not "another" and thus the claims are now in condition for allowance.

Double Patenting

Claims 1, 2, 4, 12-19, 26 and 27 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 and 21 of U.S. Patent No. 7473712 in view of Imai.

Claims 1-4, 14-19 and 26-27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 and 17 of U.S. Patent No. 7473713 in view of Imai.

The Applicant has filed a terminal disclaimer with this response. The Applicant respectfully asserts that the above listed claims are now in condition for allowance.

CONCLUSION

In light of the above amendment and remarks, it is respectfully submitted that the pending claims of the present application are in condition for allowance. If the Examiner has any questions or requires additional information, she is invited to contact the undersigned.

Respectfully submitted,

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